

**Amend Section 15626 of the Government Code to include the annual value setting for state assessees and sponsored political action committee contributions under the Kopp Act.**

**Source: Honorable Dean Andal**

As part of a comprehensive governmental ethics reform measure, Senate Bill 1738 (Chapter 84, Statutes of 1990) enacted the Quentin L. Kopp Conflict of Interest Act of 1990 (Section 15626 of the Government Code). The Act requires that, prior to rendering any decision in any adjudicatory proceeding before the Board, each member who knows or has reason to know that he or she received a contribution of \$250 or more within the preceding 12 months from a party or participant, or his or her agent, shall disclose that fact on the record of the proceeding, as specified. Further, each member is prohibited from participating in the decision or using his or her position to influence the decision if a contribution was made, as specified. The Act also provides that a party or a participant is required to disclose for the record if there has been a contribution to a member of \$250 or more in the preceding 12 months. The Act further requires that Board staff must inquire and report to the Board whether any such contributions have been made. Any person who knowingly or willfully violates any of those provisions is guilty of a misdemeanor.

Section 19 of Article XIII of the California Constitution requires the Board to annually determine the value of: (1) pipelines, flumes, canals, ditches, and aqueducts lying within 2 or more counties, and (2) property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the State, and companies transmitting or selling gas or electricity for property tax purposes. A taxpayer whose property is assessed by the Board, commonly referred to as a "state assessee," may challenge the value determination by filing an appeal.

Regulation 7003 defines "adjudicatory proceedings pending before the Board" for purposes of the Kopp Act. Subdivision (c) of Regulation 7003 specifies that the annual valuation process *is not* considered an adjudicatory proceeding. However, any subsequent appeal of the value determined by the Board of Equalization by these same taxpayers would be an adjudicatory proceeding subject to the Kopp Act conflict of interest provisions.

This proposal would close a perceived loophole in the conflict of interest provisions of the Kopp Act by including the annual value setting for state assessees under the Kopp Act. Thus both the annual valuation of state assessee property and any subsequent appeals would be subject to the contribution limits and disclosure provisions contained in the Kopp Act.

Currently, contributions by political action committees (PACs) are not subject to the Kopp Act contribution limits and disclosure requirements. This proposal defines "aggregated political committee" to mean any sponsored committee, as defined in Section 82048.7 of the Political Reform Act, that has 80 percent or more of its costs paid for by a party, agent, or participant in a specific, named adjudicatory proceeding pending before the Board. This proposal would subject contributions from such sponsored political action committees to the Kopp Act contribution and disclosure provisions.

Currently, contributions by affiliated entities are not subject to the Kopp Act contribution limits and disclosure requirements. This proposal would define "affiliated" to mean either the corporation or other entity that owns or controls a party or participant or is owned or controlled by a party or participant. This proposal would require disclosure of contributions made by either a parent or subsidiary corporation that owns or controls or is owned or controlled by another corporation, as defined in the proposal.

The proposal's other provisions, such as including definitions for "Board," "Close corporation," "Ownership or control," and "Personal staff of board member" would provide clarification to aid the Board in administering the Kopp Act. Also, including the term "nonappearance agenda item" is more applicable to Board hearings than only using the term "consent agenda."

This proposal is identical to SB 139 (Kopp) from the 1993-94 Legislative Session. Governor Wilson vetoed the bill, stating in part that it "may set an unrealistically low threshold for board members who must stand for election in a district comprising one-quarter of the state's population." The Governor added that he was supportive of campaign contribution limits.

*Section 15626 of the Government Code is amended to read:*

15626. (a) This section shall be known, and may be cited, as the Quentin L. Kopp Conflict of Interest Act of 1990.

(b) For purposes of this section:

(1) "Adjudicatory proceeding pending before the board" means any assessment pursuant to Section 19 of Article XIII of the California Constitution or any matter for adjudication that has been scheduled and appears as an item on a meeting notice of the board as required by Section 11125 as a contested matter for administrative hearing before the board. A consent or nonappearance agenda item is not included unless the matter has previously appeared on the calendar as a contested matter, or has been removed from the consent or nonappearance agenda for separate discussion and vote, or the

agenda item is one about which the member has been lobbied in person by a party or participant, or his or her agent.

(2) "Affiliated" means either of the following:

(A) The corporation or other entity owns or controls a party or participant.

(B) The corporation or other entity is owned or controlled by a party or participant.

(3) "Agent" means any person who represents a party to or participant in an adjudicatory proceeding pending before the board. If a person acting as an agent is also acting as an employee or member of a law, accounting, consulting, or other firm, or a similar entity or corporation, both the entity or corporation and the person are agents.

(4) "Aggregated political committee" means any sponsored committee, as that term is defined in Section 82048.7 and the applicable Fair Political Practices Commission regulation or regulations interpreting this section, which has 80 percent or more of its annual administrative and solicitation costs paid for by a party, agent, or participant in a specific, named adjudicatory proceeding pending before the board.

(5) "Board" means the State Board of Equalization.

(6) "Close corporation" means a corporation in which any person, or any person who together with his or her spouse, owns or controls at least 50 percent of the voting stock of a corporation. For purposes of this paragraph and notwithstanding Section 17, "person" means any natural person, a trust held for the benefit of one or more natural persons, or the personal representative of a decedent.

(7) "Contribution" has the same meaning prescribed in Section 82015 and the regulations adopted pursuant thereto.

(8) "Ownership or control" means direct or indirect ownership or control of more than 50 percent of the stock or other incidents of ownership of the affiliate.

(9) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in an adjudicatory proceeding pending before the board and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9. However, for purposes of this paragraph, the term "participant" shall be substituted for references in that article to the term "official." A person actively supports or opposes a particular decision if he or she lobbies in person a member of the board or his or her personal staff, testifies in person before the board, or otherwise acts to influence the members of the board. A person "lobbies in person" when he or she communicates directly, either in person or in writing, for the purpose of influencing a particular decision in an adjudicatory proceeding pending before the board.

(10) "Party" means any person who is the subject of an adjudicatory proceeding pending before the board.

(11) "Personal staff of a board member" means any employee of the board who is under the direct supervision of a member of the board or his or her subordinates, and does not mean any employee who is under the general supervision of the executive secretary of the board or his or her subordinates. The executive secretary of the board shall prepare and make available to the public on a quarterly basis a list that specifies the name of each employee who comes within the term "personal staff" of a member of the board under this paragraph.

(c) Prior to rendering any decision in any adjudicatory proceeding pending before the State Board of Equalization, each member who knows or has reason to know that he or she received a contribution or contributions within the preceding 12 months in an aggregate amount of two hundred fifty dollars (\$250) or more from a party or his or her agent, or from any participant or his or her agent, shall disclose that fact on the record of the proceeding.

~~(c)~~

(d) No member shall make, participate in making, or in any way attempt to use his or her official position to influence, the decision in any adjudicatory proceeding pending before the board if the member knows or has reason to know that he or she has received a contribution or contributions in an aggregate amount of two hundred fifty dollars (\$250) or more within the preceding 12 months from a party or his or her agent, or from any participant or his or her agent, and if the member knows or has reason to know that the participant has a financial interest in the decision, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9.

(e) A member knows or has reason to know about a contribution if, after the adjudicatory proceeding first appears on a meeting notice of the board, facts have been brought to the member's personal attention that he or she has received a contribution that would require disqualification under subdivision (d), or that the member received written notice from the board staff, before commencement of the hearing and before any subsequent decision on the matter, that a specific party, close corporation, or majority shareholder, or agent thereof, or any participant having a financial interest in the matter, or agent thereof, in a specific, named adjudicatory proceeding before the board, made a contribution or contributions within the preceding 12 months in an aggregate amount of two hundred fifty dollars (\$250) or more. Each member shall provide board staff with a copy of each of his or her campaign statements at the time each of those statements is filed. The notice of contribution shall be on a form prescribed under rules adopted by the board to provide for staff inquiry of each party, participant, or close corporation and its majority shareholder, and any agent thereof, to determine whether any contribution has been made to a member, and if so, in what aggregate amount and on what date or dates within the 12 months preceding an adjudicatory proceeding or decision. In addition, the staff shall inquire and report on the record as follows:

(1) Whether any party or participant is a close corporation, and if so, the name of its majority shareholder.

(2) Whether any agent is an employee or member of any law, accounting, consulting or other firm, or similar entity or corporation, and if so, its name and address and whether a contribution has been made by any such person, firm, corporation, or entity.

~~(d)~~

(f) Notwithstanding subdivision ~~(e)~~ (d) , if a member receives a contribution which would otherwise require disqualification under subdivision ~~(e)~~ (d) , and he or she returns the contribution within 30 days from the time he or she knows, or has reason to know, about the contribution and the adjudicatory proceeding pending before the board, his or her participation in the proceeding shall be deemed lawful.

~~(e)~~

(g) A party to, or a participant in, an adjudicatory proceeding pending before the board shall disclose on the record of the proceeding any contribution or contributions in an aggregate amount of two hundred fifty dollars (\$250) or more made within the preceding 12 months by the party or participant, or his or her agent, to any member of the board.

~~(f)~~

(h) When a close corporation is a party to, or a participant in, an adjudicatory proceeding pending before the board, the majority shareholder is subject to the disclosure requirement specified in this section.

(i) A contribution or contributions by any corporation that is affiliated with any party or participant shall be deemed a contribution or contributions by the party or participant.

~~(g)~~

(j) A contribution or contributions by an aggregated political committee shall be deemed a contribution or contributions by the party or participant.

(k) For purposes of this section, if a deputy to the Controller sits at a meeting of the board and votes on behalf of the Controller, the deputy shall disclose contributions made to the Controller and shall disqualify himself or herself from voting pursuant to the requirements of this section.

(l) The form prescribed under rules adopted by the board pursuant to subdivision (e) shall be signed under penalty of perjury by each party, participant, close corporation and its majority shareholder, and any agent thereof. Notwithstanding the receipt, or possible receipt, by the member of any contribution that would otherwise require disqualification under subdivision (d), if a party, participant, close corporation and its majority shareholder, or any agent thereof fails to complete and sign the form, then any member may, without restriction, vote or otherwise participate, or both, to determine that all issues in controversy are to be resolved against the party.

(m) (1) Any person who knowingly or willfully violates this section is guilty of a misdemeanor.

(2) No person convicted of a misdemeanor under this section shall be a candidate for any elective office or act as a lobbyist for a period for four years following the time for filing a notice of appeal has expired, or all possibility of direct attack in the courts of this state has been finally exhausted, unless the court at the time of sentencing specifically determines that this provision shall not be applicable. A plea of noel contender shall be deemed a conviction for the purposes of this section.

(3) In addition to other penalties provided by law, a fine of up to the greater of ten thousand dollars (\$10,000), or three times the amount the person failed to disclose or report properly, may be imposed upon conviction for each violation.

(4) Prosecution for violation of this section shall be commenced within four years after the date on which the violation occurred.

(5) This section shall not prevent any member of the board from making, or participating in making, a governmental decision to the extent that the member's participation is legally required for the action or decision to be made. However, the fact that a member's vote is needed to break a tie does not make the member's participation legally required.

~~—(h) For purposes of this section:~~

~~—(1) "Contribution" has the same meaning prescribed in Section 82015 and the regulations adopted thereto.~~

~~—(2) "Party" means any person who is the subject of an adjudicatory proceeding pending before the board.~~

~~—(3) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in an adjudicatory proceeding pending before the board and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9. A person actively supports or opposes a particular decision if he or she lobbies in person the members or employees of the board, testifies in person before the board, or otherwise acts to influence the members of the board.~~

~~—(4) "Agent" means any person who represents a party to or participant in an adjudicatory proceeding pending before the board. If a person acting as an agent is also acting as an employee or member of a law, accounting, consulting, or other firm, or a similar entity or corporation, both the entity or corporation and the person are agents.~~

~~—(5) "Adjudicatory proceeding pending before the board" means a matter for adjudication that has been scheduled and appears as an item on a meeting notice of the board as required by Section 11125 as a contested matter for administrative hearing before the board members. A consent calendar matter is not included unless the matter has previously appeared on the calendar as a nonconsent item, or has been removed from the consent calendar for separate discussion and vote, or the item is one about which the member has previously contacted the staff or a party.~~

~~—(6) A member knows or has reason to know about a contribution if, after the adjudicatory proceeding first appears on a meeting notice of the board, facts~~

~~have been brought to the member's personal attention that he or she has received a contribution which would require disqualification under subdivision (c), or that the member received written notice from the board staff, before commencement of the hearing and before any subsequent decision on the matter, that a specific party, close corporation, or majority shareholder, or agent thereof, or any participant having a financial interest in the matter, or agent thereof, in a specific, named adjudicatory proceeding before the board, made a contribution or contributions within the preceding 12 months in an aggregate amount of two hundred fifty dollars (\$250) or more. Each member shall provide board staff with a copy of each of his or her campaign statements at the time each of these statements is filed.~~

~~—The notice of contribution shall be on a form prescribed under rules adopted by the board to provide for staff inquiry of each party, participant, close corporation, and its majority shareholder, and any agent thereof, to determine whether any contribution has been made to a member, and if so, in what aggregate amount and on what date or dates within the 12 months preceding an adjudicatory proceeding or decision.~~

~~—In addition, the staff shall inquire and report on the record as follows:~~

~~—(A) Whether any party or participant is a close corporation, and if so, the name of its majority shareholder.~~

~~—(B) Whether any agent is an employee or member of any law, accounting, consulting or other firm, or similar entity or corporation, and if so, its name and address and whether a contribution has been made by any such person, firm, corporation, or entity.~~

~~—(i) (1) Any person who knowingly or willfully violates any provision of this section is guilty of a misdemeanor.~~

~~—(2) No person convicted of a misdemeanor under this section shall be a candidate for any elective office or act as a lobbyist for a period for four years following the time for filing a notice of appeal has expired, or all possibility of direct attack in the courts of this state has been finally exhausted, unless the court at the time of sentencing specifically determines that this provision shall not be applicable. A plea of nolo contendere shall be deemed a conviction for the purposes of this section.~~

~~—(3) In addition to other penalties provided by law, a fine of up to the greater of ten thousand dollars (\$10,000), or three times the amount the person failed to disclose or report properly, may be imposed upon conviction for each violation.~~

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